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from: Presidency

to: Working Party on Intellectual Property (Patents)

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Subject : Towards an Enhanced Patent Litigation System and a Community Patent - How to
Take Discussions Further

I. Introduction

1. Further to requests by the Competitiveness Council on 4 December 2006 and the European Council on 8-9 March 2007, the Commission on 3 April 2007 presented a **Communication** entitled "Enhancing the patent system in Europe" (COM (2007) 165 final, Council doc. 8302/07). The Communication is a follow up to a **stakeholder consultation** that the Commission carried out in 2006 and aims at building consensus in order to create an improved patent system in Europe that is more accessible for stakeholders, in particular SMEs. Towards this end it sets out available options for a single European patent litigation system and addresses outstanding issues concerning the proposed Community patent.
2. The Communication suggested a working method aimed at finding consensus on a single **patent litigation system in Europe**. The Communication presents three options for a way forward, a draft European Patent Litigation Agreement (EPLA) prepared under the auspices

of the European Patent Organisation, an alternative option favoured by various Member States proposing a "Community judge" for European and Community patents and a Commission suggested compromise, given that neither EPLA nor the alternative model would seem to get the necessary support in the Council. The Communication suggests a unified court system that could be used for both European and Community patents. Such an approach could involve elements of both EPLA and the alternative model referred to above. However, the technical details of such an integrated approach would still need to be worked out.

3. As to the **Community patent**, the Communication proposed to have a fresh look at two features of the Common Political Approach of 3 March 2003. Such outstanding issues involve translations of patent claims into all Community languages and the centralised first instance jurisdiction. At this stage it would appear that, once a compromise on the jurisdictional issue (involving both European and Community patents) has been found, the only remaining obstacle for the creation of a Community patent would relate to translation issues. In this context the Presidency notes that the creation of a Community patent still enjoys strong support within the Council and that at the end there might be a need for a comprehensive compromise package.
4. The previous Presidency's progress report to COREPER (10710/07 + REV 1(en)) underlined that on the basis of its questionnaire (Council doc. 8566/07) and the Working Party's discussions progress has been achieved with respect to the awareness and knowledge of the factual and legal aspects concerning the litigation issue which need to be addressed in more detail before the Council can adopt conclusions by consensus.
5. The Portuguese Presidency suggests that work now focuses on the features and technical details required for a legally secure, cost effective and non-discriminatory patent litigation system around which consensus could be built among Member States and stakeholders. This work will take account of the comprehensive information on the features of the patent litigation schemes in all Member States and the factual material which is summarised in the Annex to this working document. This detailed overview is based upon the material that has

been provided by the delegations in response to the questionnaire of the previous Presidency. The Presidency invites delegations to fill in any gaps in the attached tables which might exist in relation to their respective Member States in order to have a complete picture of the current situation in Member States.

6. While this factual material is helpful for assessing the impact of available options for a single European patent litigation system, there is a need for considerably intensifying the Council's continued search for effective solutions concerning a European-wide patent jurisdiction and the Community Patent.

For this reason the Presidency has provisionally scheduled four Council Working Parties to take place during the second half of 2007. The first three Working Parties will be devoted to the main issues concerning the litigation system, while the fourth one will discuss outstanding issues related to the Community patent. This working document is therefore structured accordingly.

7. Work concerning features and technical details of the litigation system will focus on the following issues:
 - i. Degree and mode of decentralisation of the first instance of the litigation system;
 - ii. Features of the second instance;
 - iii. Qualification of judges and technical expertise in court proceedings;
 - iv. Allocation of cases and relationship with the Brussels I Regulation;
 - v. Rules of procedure;
 - vi. Provisional and precautionary measures;
 - vii. Operating costs;
 - viii. Arbitration procedures;
 - ix. Community patent.

The present working document provides for different options on each of those topics which should be considered as building blocks for achieving overall consensus.

II. Outstanding issues

i. Degree and mode of decentralisation of the first instance of the patent litigation system

From discussions under the previous Presidency it seems clear that, contrary to the political approach of 2003, delegations now feel that the first instance should be decentralised. However, there are different degrees of decentralisation imaginable.

- (a) One approach would be to establish a central division with a limited number of regional chambers established in Member States on the basis of a sufficient number of cases and resulting experience in patent litigation. This would have the advantage of a higher degree of specialisation and cost effectiveness and would help avoiding problems with sparsely used and possibly inefficient court structures in the case of low litigation activity. A limited number of regional chambers would also facilitate the availability of technical expertise in those chambers.
- (b) Another approach would be that Member States designate as limited a number as possible of national courts and tribunals of first instance (e.g. between one and three). This option would draw from the Protocol on the settlement of litigation concerning the infringement and validity of Community Patents (Protocol on litigation, Luxembourg 1989, OJ L 401, 30 December 1989, p.34). The patent tribunals of first instance would have exclusive jurisdiction over infringement and validity of European and Community patents, including counterclaims for revocation (cf. Article 15 of the Protocol on litigation).

Such a model, under which specialised patent tribunals would be available in all Member States, would have the advantage of a maximal proximity for litigants and would allow proceedings in the official language of the Member State where the

tribunal is located. At the same time it would ensure that the judicial functions concerning all other types of patent actions and proceedings would be performed by structures designated by the Member States. Finally it would allow the use of existing infrastructures whilst limiting the number of tribunals dealing with patent litigation.

Concerns of patent users related to a decentralisation of invalidity actions under this scenario could be addressed and remedied at second instance level.

ii. Features of the second instance

From the discussions under the previous Presidency it appears that there is broad consensus about the need to have a centralised appeal court dealing with both matters of fact and law in relation to both infringement and invalidity.

A centralisation of proceedings at appeal level would have the advantage of providing for speedy and consistent decisions by a highly specialised Community jurisdiction. To the extent that invalidity actions would be concerned it would also allow to require technical expertise or technical qualifications of judges employed by the common entity.

Further to a decision on the structure of the second instance there are still several other issues to be considered such as time-limits, grounds and effect of an appeal. Another open issue is the linkage with the Community judicature (CFI - Court of First Instance and / or ECJ - European Court of Justice). One possible option could be to establish a specialised patent litigation chamber at the Court of First Instance (CFI) to deal with appeals. Another option would be to establish an independent appeal court but to allow the ECJ to grant certiorari on matters of law in specific cases, in particular in matters concerning existing Community acquis.

iii. Qualification of judges and technical expertise in court proceedings

The discussions under the previous Presidency have furthermore shown that there is a need for ensuring technical expertise in the court proceedings both at first and second instance. One way of achieving this result would be to appoint not only legally but also technically qualified judges. Another way could be to have technically qualified assistants, however without a right to vote, to assist the judges throughout the handling of the case.

It is also important to ensure full judicial independence and impartiality.

iv. Allocation of cases, international jurisdiction and relationship with the Brussels I Regulation

The question of allocation of cases amongst different regional chambers or first instance courts, regardless of whether there will be an allocation by a central registrar or not, could be based, directly or indirectly, on the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation).

Pursuant to Article 22 (4) of the Brussels I Regulation, and without prejudice to the jurisdiction of the European Patent Office under the European Patent Convention, the courts of each Member State have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State.

To the extent that specific rules or derogations from the afore-mentioned rules in the Brussels I Regulation are to be considered, available options might be based either on the concepts of *lex specialis* or *lex posterior*. Similar approaches had been chosen in

relation to disputes concerning the infringement and validity of Community trade marks (Articles 90 and 93 et seq. of Council Regulation (EC) No. 40/94).

In this context, one might consider the possibility for the patent owner domiciled outside the European Union to freely chose a chamber or first instance tribunal. In any event litigants should be free to agree on a chamber or first instance tribunal of their choice.

v. Rules of procedure

Thus far discussions in the Council have not yet focussed on the rules how to conduct the procedures in the newly to be established European patent judicature. The required rules will have to deal with all aspects of patent litigation, from how to start the litigation to case management, the way oral arguments will be heard which protective measures can be ordered by the court, to the use of electronic tools within the court proceedings. To a large extent these rules can be based on the work that has been carried out in the context of the EPLA. Whether it will suffice to harmonise existing national rules of procedure or if there should be uniform rules of procedure depends upon the extent of centralisation or decentralisation which will be chosen for the first instance (regional chambers of a central division or fully decentralised first instance Community courts).

vi. Provisional and precautionary measures

Useful provisions concerning provisional and precautionary measures in relation to infringements of intellectual property rights such as patents have been provided by the Enforcement Directive (cf. Articles 9 et seq. of Council and European Parliament Directive 2004/48/EC on the enforcement of intellectual property rights). However, it should be considered whether further technical detail may be required.

vii. Operating costs

Under the EPLA proposal it had been suggested that the operating costs of the patent judiciary (related to salaries, buildings, office equipment etc.) would be borne either by litigants or users of the patent system. This has been criticised because of concerns in relation to the principles of judicial independence and separation of powers. Moreover it has been claimed that such an approach would unnecessarily add to the cost burden for litigants, in particular SMEs. In this context the European Parliament has also expressed concern that access to justice must also be affordable in the field of patents.

In this context it is interesting to note that in other fields of *inter partes* proceedings including IPR matters operating costs of tribunals and courts of law are normally borne by public budgets. In the case of an integrated patent judiciary possible options could thus involve financing of operating costs of regional chambers or decentralised first instance courts by Member States budgets and of the appeal court by the Community budget.

viii. Arbitration procedures

The creation of the patent jurisdiction should be without prejudice to the national arbitration rules of the Member States.

ix. Community patent

In its Communication the Commission has suggested to take a fresh look at the translation requirements for the Community patent. In this respect one option could be to ensure translations of patent claims into all official languages. Financial incentives for Member States that accept to renounce to translation into their official language could be envisaged. Also another option which is favoured in particular by certain business organisations could be to provide for "English only" (the patent would be granted by the

EPO in English and no further translations would be required). Still another option would be to refer to the Commission's original proposal which did not provide for translations as a validity requirement but suggested in relation to actions or claims for damages that damages for infringement shall be due only for the period from the time when the alleged infringer is notified of a translation in the official language of the Member State of his residence or principal place of business (cf. Article 44 of the Proposal for a Council Regulation on the Community patent, Commission document COM (2000) 412 final, 1 August 2000). Also a combination of options could be envisaged.

Finally, in the case that translation of patent claims is chosen, practical problems resulting from the need of translating possibly millions of pages of patent claims *inter alia* into less frequently spoken Community languages would need to be tackled. Bearing in mind that there are physical limits to translation capacity, practical and pragmatic solutions need to be found in order to ease the translation burden. One possibility could be to provide for machine translations of patent claims. The Portuguese Presidency believes that this option merits further reflection and will in particular provide Member States with more information about the state of play of the EPO's "European Machine Translation Programme".

AUSTRIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
?	2005: 21 invalidity; 17 infringement; 9 preliminary injunction procedures 2006: 12 invalidity; 19 infringements; 9 preliminary injunction procedures	Civil Courts (Infringements)	?	?	2005: 7 invalidity; 1 infringement; 6 preliminary injunctions 2006: 7 invalidity; 1 infringement; 5 preliminary injunctions	Administrative Courts (Invalidity) Civil Appeal Courts (Infringements)	?	Dual system - Invalidity cases before National Office - Infringement before Civil Courts	Technical judges in both administrative and civil Courts. Attached to a Court for a period of 5 years	No

POLAND

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
?	around 20	Civil Courts for infringement	Regular judges	Main Administrative Court (Invalidity)	?	Administrative Court (Invalidity) Civil Appeal Court (Infringement)	Regular judges	Dual system Invalidity before the National office and appeal before the Main Administrative Court Infringement before the civil court system	Opinion from experts is possible. No technical judges	No

LATVIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Riga Regional Court	18 cases since 1992 (1-2 per year)	No specialisation. Court of general jurisdiction both for invalidity and infringement	?	Riga Regional Court	6 since 1992	Court of general jurisdiction both for invalidity and infringement	?	Since 01/03/07 single system. Before this date invalidity only before Riga Regional Court and infringement before any district (city) Court	Experts can be involved (civil procedure law). No judges with technical qualification	Very few cases but solved by amicable settlement between parties

CYPRUS

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
	Very few	All cases before the same court	?	Supreme Court of Cyprus	very few	All cases before the Supreme Court of Cyprus	?	Single system	No technical judges because of the constitution	?

MALTA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
First Hall of the Civil Court	Very few	In accordance with Art. 44 and 48 of the Patents and Designs Act all cases (revocation and infringement) are heard before the same court, the First Hall of the Civil Court	?	?	Very few	No. Civil Courts	?	Single system	No technical judges only judges with legal background. Expert might be appointed to advise the Court by means of a Legal Referee Report	?

CZECH REPUBLIC

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Regional Courts and as from 01/01/08 the Municipal Court in Prague (infringements) Municipal Court in Prague (invalidity)	5 infringement cases 4 invalidity cases	Administrative Court (Invalidity) As from 01/01/08 the Municipal Court in Prague will have exclusive jurisdiction (infringements)	?	Supreme Administrative Court of the Czech Republic (invalidity cases) High Courts (appeal) and Supreme Court of the Czech Republic (cassation) (infringements cases)	?	?	?	Dual system. Invalidity before the National Office and appeal before administrative courts. Infringements before civil courts	No technical judges but legal background. Opinion of an expert possible but not binding	?

SLOVAK REPUBLIC

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Regional Court in Banska Bystrica (invalidity)	Up to 5 invalidity cases a year (only 1 invalidity case on European patent so far)	Administrative proceedings (IPO + administrative courts) (invalidity)	1 judge (infringement)	Supreme Court (invalidity)	75% of invalidity decisions go to appeal	Administrative proceedings (invalidity)	Board of 3 judges (infringement)	Dual system	Judges are legally qualified (Constitution). No technical judges (except within the IPO for invalidity cases). Opinion of experts possible but opinion is not binding.	?
District Courts of Bratislava 1, of Banska Bystrica and of Kosice 1	Up to 5 infringement per year	Civil proceedings (infringement)		Regional Courts in Bratislava, Banska Bystrica and Kosice	10% of infringement decisions go to appeal	Civil proceedings (infringement)				

ESTONIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Harju County Court (invalidity) Harju County Court, Viru County Court, Tartu County Court, Pärnu County Court	5-10 since 1994	Civil courts. But Invalidity before the jurisdiction of which the Estonian Patent Office is located. Infringement before the jurisdiction of which the offence occurred	?	?	?	Civil courts	?	Single system	No technical judges. Judges have a legal qualification. (Within the national office some members of the Board of Appeal, competent for invalidity cases, have a technical background). Opinion from experts is possible.	No

LITHUANIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Vilnius Circuit Court	No data available (but it should be a small number)	No specific court for patents. However patent litigations are for the civil courts of Vilnius.	1 judge	Vilnius Appeal Court	Around 10 cases. 5 cases before the Supreme Court	No specific court for patents. However patent litigations are for the civil courts of Vilnius.	Board	Single system	No technical judges. Opinion from experts possible but not binding	?

SLOVENIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
District Court in Ljubljana	3 to 6 a year (very few regarding European patents)	No specialist court. However only 1 civil court in Slovenia for all disputes in IP matters.	3 judges. The president is legally qualified, the two other are not always legally or technically qualified	Ljubljana High Court	3 to 6 per year	No specialist court. However only 1 civil appeal court in Slovenia for all disputes in IP matters	3 judges	Single system (no jurisdiction given to the national office)	No technical judges. But "specialisation" due to their centralised system. Non binding expert's opinion is possible.	?

ROMANIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Bucharest Court – Civil Section (invalidity) Territorial courts of law (infringement) Bucharest Court (interdiction or ceasing)	20 cases in 2005 (8 invalidity; 5 infringement; 7 related to enforcement of rights) 13 cases in 2006 (5 invalidity; 4 infringement; 4 related to enforcement of rights)	Invalidity: civil court of Bucharest or national office within 6 months from publication Infringement: before territorial civil court according to location of the infringement	Bucharest Court: 3 judges	Court of Appeal Bucharest	?	Only one Appeal Court	3 judges	Dual system	No technical judges but expert's opinion are possible. Due to the specialisation of Courts judges are trained to IP matters with specific training programs	No

BULGARIA

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Sofia City Court (infringement)	less than 5 a year altogether (no case related to European patent)	Invalidity: national office and then appeal before administrative court Infringement: only 1 civil court	?	Sofia administrative Court (invalidity) Court of Appeals (infringement)		Invalidity before the administrative court (cassation before the Supreme Administrative Court) Infringement before the civil appeal court (cassation before the Supreme Court of Cassation)	?	Dual system Infringement: civil courts Invalidity: administrative court	Judges must be legally qualified, however due to the specialisation of the Courts judges become "specialised". Opinion of experts (listed before the court) is possible. Non binding opinion.	?

HUNGARY

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Metropolitan Court of Budapest (Special Chamber)	15-20 infringement cases a year but only national patents Less than 10 invalidity cases before the national patent office	Judicial instances are the same for invalidity and infringement actions. However Invalidity initiated before the national office and Might be challenged before civil courts	Specific chamber of the Metropolitan Court of Budapest consisting of 3 professional judges of whom 2 shall have technical university degrees (or equivalent).	Budapest Board of Appeal	7-10 infringement cases	Territory specialisation	3 judges but no technical judge	Single system but with specification	In 1 st instance 2 technical judges among the 3 judges of the panel. Technical judges may have dual qualification but it is not compulsory for them to also have legal qualification. The three judges of the panel have the same right.	?

GERMANY

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
	Invalidity: 221/year Infringement: 600-700/year	Yes	?		Nullity: 30/year Infringement: 175/year	Yes	?	Dual system	Technically qualified judges for invalidity cases.	?

UNITED KINGDOM

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
? Patents Court (part of the High Court) and the Patents County Court EN/Wales only	Patents Court: 2004: 153 filed cases; 2005: 54 filed cases	Yes.	? Deputy judges	Court of Appeal for England and Wales	2004: 11 filed cases; 2005: 26 filed cases	One judge is patent specialist.	?	Single system	No non-legal technically qualified judges. However most judges have a technical background, and before becoming judges practiced as patent barristers. Technical experts may be employed or appointed but do not sit on the bench on a par with legally-trained judges.	In recent years a few notable cases where judgements in different jurisdictions have diverged. Recent examples (2007): Document Security Systems v European Central Bank (UK/DE differences); Angiotech v Connor (UK/NL differences)

DANMARK

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILIBILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Sø- og Handelsretten, Copenhagen	10-15 cases/year	Yes, but not for preliminary injunctions.	?	?	2-3 cases/year	?	?	Single system	Yes, possible at first instance	?

NETHERLANDS

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
1 Hague District Court	30-35 judgements/year in full proceedings; about 20 judgements/year in summary proceedings	Intellectual property chamber	Composition ? Part time judges: yes	1 Hague Court of Appeal (NB Appeals to Supreme Court on questions of law)	about 9 per year (NB Supreme Court 2/3 judgements/year)	Intellectual property chamber	Composition ? Part time judges: yes	Single system, but opinion of national patent office about grounds for nullification is needed in actions on the invalidity of national patents. Both parties are heard before opinion is delivered. Reason: since 1995 national patent applications are always granted together with publication of search report and written opinion ("French system").	No special requirements for judges apart from university degree in Dutch law. Some judges have a technical background.	Yes, some recent examples are: - NL case-law recognises "prosecution history estoppel" doctrine (unlike e.g. UK and DE case-law) - NL case-law on inventive step seems more lenient than UK case-law (Windsurfing doctrine)

											<ul style="list-style-type: none"> - NL case-law on scope of protection/doctrine trine of equivalence is between DE (Karin/Amgen) and DE (Schneidmesser) - amendment granted claims of a patent requires predictability for the person skilled in the art after examining the patent and the new new revealed prior art; - Six month term of Art 55 (1) (a) EPC in case of evident abuse in relation to applicant starts at priority date (DE at filing date)
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SWEDEN

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILIBILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Tingsrätt Stockholm	30-50 cases (overall)	Yes	5 judges (2 technically qualified)	?	30-50 cases (overall)	?	?	Single system	Yes, technically qualified judges	

FINLAND

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
1. District Court of Helsinki	15-20 cases per year	Patent court	Composition: ? Part time: ?	1. Helsinki Court of Appeal (NB appeal to Supreme Court)	85-90% of first instance judgements are appealed	Patent court (NB decisions Finnish PO are appealed to its Board of Appeal and finally Supreme Administrative Board. National working group examines current system and possible creation of centralised IPR court	Composition: ? Part time: ?	Single system	No special competence requirements for patent judges. Legally trained judges are assisted by two technical experts appointed ad hoc by the court. Technical experts participate actively in proceedings but do not have right to vote. Opinion of Finnish PO is compulsory in invalidation proceedings and voluntary in other proceedings.	Not mentioned.

GREECE

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
2. Court of First Instance of Athens and Thessaloniki	No data available	Industrial Property courts	Composition: ? Part time: ?	2. Court of Appeals of Athens and Thessaloniki (NB Appeals to Supreme Court on questions of law)	No data available	Industrial Property courts	Composition: ? Part time: ?	Single system	Judges only need legal education. Courts may appoint technical experts (renders a non-binding opinion) and parties may petition the court to appoint a technical expert	No, not aware of

FRANCE

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
7 Tribunal de première instance (TGI)	459 new cases in 2005; 487 new cases in 2006	TGI de Paris hears more than 50% of the cases. Nine judges deal exclusively with IP cases. In other TGI patent cases are heard by one chamber with also other competences	?	7 Cours d'appel (CA)	292 new cases in 2005; 382 new cases in 2006	CA de Paris hears more than 50% of the cases. Six judges deal exclusively with IP litigation. In other CA patent cases are heard by one chamber with also other competences	?	Single system.	Patent judges are "juges de droit commun" with legal background but they subsequently receive specific IP training. No technical judges but the judge or the parties can designate a consultant (engineer or research) who is actively involved in the proceedings but does not participate in the judges' deliberations	Several examples: - in the pending case Document Security Systems v European Central Bank (UK/DE differences on validity, FR decision still awaited); - In Muller v Hilti cases DE, CH and FR courts came to different decisions on infringement/validity (1999-2001)- Agilent v Waters: in similar cases DE courts declared patent not infringed whereas EN and FR declared patent infringed (2002-2004)

BELGIUM

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
<p>Until 1 November 2007: Tribunaux de première instance</p> <p>From 1 November 2007: Tribunaux de commerce established at a Cour d'appel (5)</p>	30 new cases each year (2/3 settled before judgement)	New regime should lead to more specialisation	<p>There is no specialised judge in commercial court. The tribunal is composed of a legal qualified judge and two "consulaires" judges.</p> <p>Part time: ?</p>	?	Majority of first instance decisions are subject to appeal (most of these appeal cases reach settlement before decision or are withdrawn)	?	?	Single system	?	Yes, once example is the "Senseo" case with different rulings on indirect infringement by the BE and NL courts (2005)

PORTUGAL

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
<p><u>Revocation and Validity:</u> Court of Commerce of Lisbon</p> <p><u>Infringements Actions:</u> Can be conducted in any court, according to the jurisdiction rules</p>	Around 20 cases (estimated)	Only litigation associated with revocation or validity proceedings is conducted in specialized courts	<p>No, they do not need any additional or different qualifications in comparison with other judges.</p> <p>The Judges can be assisted by expert's</p>	<p><u>Revocation and Validity:</u> Appeal Court of Lisbon</p> <p><u>Infringements Actions:</u> Can be conducted in any court of Appeal, according the jurisdiction rules.</p>			<p>No, they do not need any additional or different qualifications in comparison with other judges.</p> <p>The Judges can be assisted by expert's</p>	<p>Dual system</p> <p>The patent validity litigation is brought before the commercial courts. The infringement cases are brought before the civil or criminal courts</p>	<p>No technical judges but before the Commerce court, the judges can asked for the opinion of an expert and of the Portuguese patent office</p>	<p>No available data.</p>

SPAIN

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Juzgados de lo Mercantil (generally one per province).	?	The Juzgados de lo Mercantil have exclusive jurisdiction in IP litigation	?	Audiencias Provinciales (NB appeal to Tribunal Supremo)	?		?	Single system	No. No technical judges without legal qualification. Judges need to demonstrate specific knowledge. Parties may present an expert's opinion or ask the courts to designate an expert with specific knowledge of the matter discussed in the case. The expert's opinion is non binding.	No examples, if there would be cases they do not seem to be problematic

ITALY

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
12 tribunals (Genova, Torino, Milano, Venezia, Trieste, Firenze, Bologna, Roma, Napoli, Bari, Palermo, Catania)		Yes 12 tribunals specialised in IP litigation since the 27 June 2003 statute. The competence covers national, CT and international trademarks, patent, vegetal variety, designs, copyright	Not less than 6 judges under article 2 of the statute the judges must have specific knowledge of IP.	12 courts of appeal		Yes 12 court of appeal specialised in IP litigation since the 27 June 2003 statute.				

LUXEMBOURG

(oral observations)

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
	No patent cases for the last 15 years	No	?		No patent cases for the last 15 years	No	?	Single system	No technically qualified judges.	No example

IRELAND

1ST INSTANCE COURTS				2 ND INSTANCE COURTS				SINGLE/DUAL SYSTEM FOR INVALIDITY/ INFRINGEMENT ACTIONS	AVAILABILITY OF TECHNICAL EXPERTISE	DEVIATING CROSS BORDER CASE-LAW
Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges	Name And Number Of Courts	Number Of Cases	Specialisation	Composition Of Courts / Part Time Judges			
Commercial court of the High Court (NB Also possible to bring revocation proceedings before the Patents Office)	1 case of infringement and 4 revocation proceedings in the last 2 years (NB End of 2006: 3 pending cases before the PO)	No	?	Supreme Court Decisions of the PO in revocation proceedings may be appealed to the High Court and further appealed on questions of law to the Supreme Court	No appeal filed on High Court decisions.	No	?	Single system	The High Court and Supreme Court may call in an assessor specially qualified in the opinion of the Court and try the case wholly or partially with the assessor's assistance. Assessors do not sit on the bench on a par with legally qualified judges.	Not aware of any examples